

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.452 OF 2021

(Shami Ahmed Bacchu Bhai Kureshi Vs. Rizwana Shami Ahmed Kureshi and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. H.S. Chawhan, Advocate for Petitioner.

CORAM: ROHIT B. DEO, J.

DATE: 29th JUNE, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The petitioner is challenging the order dated 26.02.2021 rendered by the Judicial Magistrate First Class, Court-1, Umarkhed in P.W.D.V.A. 25/2019 whereby respondent 1 wife is granted monthly interim maintenance of Rs.800/- and the four children from the wedlock are granted monthly interim maintenance of Rs.600/- each.

3. The learned counsel for the petitioner Mr. Chawhan would submit that the interim maintenance is on the higher side and that the petitioner is only an agricultural labour.

4. Mr. Chawhan's submission is belied by the factual aspect noted by the learned Magistrate, *inter alia* in paragraphs 10 and 11 of the order which read thus:

10. It is contended by the applicants that, non-applicants earn the income of Rs. Forty

Lakh per year from their ancestral agricultural lands. Applicants have filed 7/12 extracts in the name of N.A. Nos. 01 and 02 and in the name of deceased father of N.A. No. 01. Said 7/12 extracts reveal that N.A. No. 01 own and possess the agricultural land area 01 H. 49 R. in Gat No. 40 and land area 1 H. 21 R. in Gat No. 95/2 both situated at village Shelu, Tq. Arni. The copies of Tax receipts prima facie reveal that, a house No. 444 situated at village Shelu is also in the name of N.A. No. 01 and house No. 443 is in the name of his deceased father Bachubhai Kureshi. In the Affidavit dated 09/04/2018 executed by N.A. Nos. 01 and 02 before Executive Magistrate Arni, the N.A. Nos. 01 and 02 have stated that, they are legal heirs of Bachubhai Kurehsi and they have rights in his ancestral house properties and open space situated at village Shelu. N.A. No. 01 has also filed his own Affidavit at Exh. 27 and has admitted that, he owns about 07 acres land in Gat Nos. 95/2 and 40 and a house property. But he has stated that, said agricultural land is not cultivable and it is a barren land. However, N.A. No. 01 has not produced any acceptable material on record which can show that, said agricultural lands owned by him are barren lands and are not cultivable. The 7/12 extracts of said lands does not reveal that, said lands are barren lands. Hence, said contentions are not acceptable at this stage.

11. Although, it is established on record that, N.A. No. 01 owns about seven acres of agricultural land, but applicants have not filed any material on record which can show the exact amount of income earned by the N.A. No. 01 from said agricultural lands. According to the applicants, non-applicants earn Rs. Forty Lakhs per year from their agricultural lands. But, at this preliminary stage, there is no material on record to substantiate this contention. The land

admeasuring 02 H. in Gat No. 97/2A is shown in the name of N.A. No. 02 and land admeasuring 02 H. in Gat No. 97/2 is shown in the name of Bacchubhai i.e. deceased father of N.A. No. 01. However, at this stage, there is no material on record whether N.A. Nos. 01 and 02 are residing separately by partition or they are residing in joint family. There is no material on record regarding the income source of N.A. Nos. 03 to 05. They are shown to be residing at Gujarat State. Hence, N.A. Nos. 02 to 05 cannot be held liable for paying interim monetary relief to the applicants at this stage.

5. I am more than satisfied, that the interim maintenance is neither unjust nor on the higher side. *Au contraire*, the interim maintenance is on the lower side. Be that as it may, there is absolutely no reason for this Court to interfere in exercise of writ jurisdiction.

6. The petition is dismissed.

7. The Registry shall bring this order to the notice of the Judicial Magistrate First Class, Court-1, Umarkhed who is dealing with P.W.D.V.A. 25/2019, within the next two weeks.

JUDGE